

AGREEMENT

BETWEEN

KENTUCKY DEPARTMENT OF AGRICULTURE (KDA)  
DIVISION OF FOOD DISTRIBUTION

AND

\*\*\**Insert Name of Agency Here*\*\*\*

FOR THE STORAGE AND DISTRIBUTION OF USDA COMMODITIES THROUGH THE  
COMMODITY SUPPLEMENTAL FOOD PROGRAM

This Agreement, entered into July 1, 2004, by and between Kentucky Department of Agriculture, Division of Food Distribution, 107 Corporate Drive, Frankfort, Kentucky 40601, hereinafter referred to as State Agency and the \*\*\***Insert Name of Agency Here**\*\*\*, hereinafter referred to as the Local Agency. This Agreement shall remain in effect in perpetuity and amended by the Department as necessary.

RECITAL

WHEREAS, pursuant to 7 USC 612 (c), the United States Department of Agriculture (USDA), and the Kentucky Department of Agriculture, Division of Food Distribution, is authorized to enter into agreements with certain agencies to implement the Commodity Supplemental Food Program (CSFP) under which women, infants, children, and elderly individuals in low-income groups who are vulnerable to malnutrition may obtain supplemental nutritious foods; and

WHEREAS, the Local Agency, as a non-profit organization, is eligible for entering into agreements with the State Agency for the purpose of distributing supplemental food to eligible individuals in accordance with 7 CFR Parts 247 and 250; and

WHEREAS, the Local Agency will provide USDA commodities to all eligible Local Distributing Agencies (LDAs) who hold a 501(c)(3) status (e.g. Council on Aging, Department of Social Services, Salvation Army) for distribution; and

WHEREAS, the State Agency desires to enter into an agreement with the \*\*\***Insert Name of Agency Here**\*\*\* for storage and distribution of USDA commodities.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, the State Agency and Local Agency agree as follows:

## ARTICLE I AGREEMENT PERIOD

This Agreement shall take effect as of July 1, 2004, and shall, unless terminated sooner in accordance with Article VI hereof, continue in full force and effect through June 30, 2005.

## ARTICLE II DEFINITION OF TERMS

As used in this Agreement, the following terms shall have the following defined meanings:

Actual Expenditure, Actual Program Expenditure, Actual Cost: The dollar amount of a disbursement actually made by the Local Agency whether allowable or unallowable.

Administrative costs: Those direct and indirect costs identified under Office of Management and Budget (OMB) Circulars A-87, for State and local government agencies and A-122, for private nonprofit organizations that are necessary to support CSFP operations.

Adjusted Expenditure, Adjusted Program Expenditure, Adjusted Cost: The dollar amount arrived at by taking One Hundred Fifteen percent (115%) of the budgeted category for a program expenditure or the allowable program expenditure for the same category, whichever is lesser, not to exceed the total budget.

Adult/Elderly Package: A box packed with assorted USDA commodities for Adult CSFP participants by the Local Agency for distribution to eligible certified participants through assigned Local Agencies or Local Distributing Agencies.

Allowable Expenditure, Allowable Cost: The dollar amount of a disbursement made by the Local Agency in the provision of service(s) which is defined as allowable by applicable USDA regulations.

Breastfeeding women: Women up to one year postpartum who are breastfeeding their infants.

Budgeted Expenditure, Budgeted Program Expenditure, Budgeted Cost: The dollar amount allocated for expenditures in Article IV of this agreement.

Caseload: The number of persons approved by USDA, Food and Nutrition Service (FNS) to be served over a specified period.

Caseload cycle: The period beginning with the later of (1) each December 1 or (2) a date not to exceed 30 days after enactment of appropriations legislation for the full fiscal year, and ending each November 30.

Categorical Ineligibility: Persons who do not meet the definition of pregnant women, breastfeeding women, postpartum women, infants, children, or elderly persons.

Certification: The use of criteria and procedures to assess and document each applicant's eligibility for CSFP.

Child Package: A box packed with assorted USDA commodities for infant and child participants by the Local Agency for distribution to eligible, certified participants through LDAs.

Children: Persons who are at least one (1) year of age but have not reached their sixth (6th) birthday.

Department: The Kentucky Department of Agriculture.

Distributing agency: An agency which has entered into an agreement with a State agency and with the Department for the distribution of commodities under 7 CFR part 250, subchapter B -- Food Distribution Regulations.

Dual participation: Simultaneous participation by an individual in the CSFP at more than one local agency, clinic, or simultaneous participation in the CSFP and in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), 7 CFR Part 246.

Elderly Person: A person sixty (60) years of age or older.

Emergency Food Organization (EFO): A nonprofit or government organization contracted with the State Agency to administer the Program.

Final Reimbursement: The dollar amount arrived at by computing the difference between total interim reimbursement and total adjusted program expenditure where total adjusted program expenditure is greater than total interim reimbursement.

FNS: The Food and Nutrition Service of the U.S. Department of Agriculture.

Generally Accepted Accounting Principles: Those objective accounting principles ordinarily employed by skillful accountants and agreed upon by authoritative writers, practitioners of recognized professional standing, the American Institute of Certified Public Accountants and most recognized professional bodies.

Homebound elderly persons: Persons who are, in the judgment of the local agency, unable to obtain monthly food packages without assistance provided by or through the local agency.

Household: An economic unit which is a group of related or unrelated people who share all significant income and expenses of its members, and is characterized by sharing expenses such as food, housing, medical costs, and household insurance. More than one economic unit may live in the same household. Separate economic units living in the same household are characterized by prorating of expenses and have economic independence of each other.

Infant: A child under one (1) year of age.

Local Agency: A public or private non-profit agency, which enters into agreement with the Kentucky Department of Agriculture, Division of Food Distribution, to administer the CSFP. A local agency determines the eligibility of applicants distributes supplemental foods and provides nutrition education to low-income persons, either directly or through another agency with which it has entered into a written agreement in accordance with 7 CFR Part 247§6. In addition, existing local agencies are required to maintain the health ties at the same level that were effective prior to March 3, 1978. All other local agencies are encouraged to develop health services linkages and, at a minimum, are required to advise participants of the importance of health care and where low-income persons can obtain such services. The term local agency includes an IHS service unit, an Indian tribe, band or group recognized by the Department of the Interior, or an intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior.

Local Distributing Agency or LDA: A public or private non-profit agency that enters into agreement with the Local Agency to conduct eligibility determinations and food distribution activities for participants in the CSFP program.

Nonprofit agency: A private agency that is exempt from income tax under the Internal Revenue Code of 1954, as amended.

Participant: Pregnant women, breastfeeding women, postpartum women, infants, children, and elderly persons who are receiving supplemental foods under the CSFP.

Participation: The number of eligible persons who received supplemental foods through CSFP in the reporting period.

Postpartum Women: Women up to twelve (12) months after termination of pregnancy.

Pregnant women: Women determined to have one or more embryos or fetuses in utero.

Program: The Commodity Supplemental Program of the Food and Nutrition Service of the United States Department of Agriculture.

Request for Reimbursement: The request prescribed in Article IV, Section B, of this agreement.

Social Security Act: 42 USC 7, as amended.

State Agency: The Kentucky Department of Agriculture, Division of Food Distribution (KDA).

State Agency Plan of Program Operation and Administration (State Plan): The document which, as required by 7 CFR Part 247 and, as applicable, 7 CFR Part 250 describes the manner in which the State agency intends to implement and operate all aspects of Program administration within its jurisdiction.

Supplemental Foods: Foods donated by USDA for use by eligible persons in low-income groups who are vulnerable to malnutrition.

Total Budget: The dollar amount of the total program budget specified in Article IV of this agreement.

Total Adjusted Program Expenditures: The sum of adjusted program expenditures for all categories and personnel line items.

Total Funds: Funds consisting of the State Agency appropriated funds.

Total Reimbursement: The dollar amount equal to the sum of all reimbursements received by the Local Agency from the State Agency in a given period of time.

Unallowable Expenditure, Unallowable Program Expenditure, Unallowable Cost: The dollar amount of disbursement made by the Local Agency which is not reasonable and necessary to the program, or which is defined as unallowable by USDA regulations, or which has not been budgeted.

WIC Program: The Special Supplemental Nutrition Program for Women, Infants, and Children

### ARTICLE III LOCAL AGENCY RESPONSIBILITIES

For the Agreement period, the Local Agency agrees to provide for the storage and distribution of USDA food commodities through the CSFP for the State of Kentucky.

#### Description of Services

The Local Agency shall provide storage and distribution of USDA commodities for the State of Kentucky. Distribution shall be made to LDAs to provide services only to those persons, who as determined by the State Agency, qualify under the applicable state and/or federal guidelines. The State Agency serves as a LDA and as a pass-through agency pursuant to the CSFP, through which USDA administrative funds shall be distributed for the storage and distribution of these commodities.

#### A. Local Agency Compliance

1. Local Agency shall comply with all applicable state and federal laws, regulations and executive orders including, but not limited to, those regarding non-discrimination on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status.
2. Local Agency shall agree to operate the program in accordance with the requirements as set forth in 7 CFR Part 247 and, as applicable, 7 CFR Part 250.

3. Local Agency shall maintain current knowledge of commodity distribution regulations and procedures. Local Agency shall provide the State Agency with documentation of costs for nutrition education training, conferences, etc., designed to improve service delivery in the CSFP.
4. Local Agency shall ensure that donated supplemental foods are not sold, exchanged, or otherwise disposed of without the written approval of the State Agency.

B. Receipt, Storage, and Handling

1. Local Agency shall comply with all receipt, storage, handling, and distribution requirements of CSFP and USDA policy memoranda as specified in this agreement.
2. Local Agency shall agree to accept and store all USDA commodities that can only be used without waste.
3. Local Agency shall provide adequate facilities for the handling, storage, and distribution of commodities, including proper pest control and climate control to properly safeguard the commodities against theft, spoilage, or other loss, and shall meet all state and local health standards.
4. Local Agency shall ensure that monthly inspections are conducted for both inside and outside pest and rodent control which includes monthly inspections performed by a professional extermination company licensed in the State of Kentucky. Local Agency shall maintain on file a copy of the extermination company's inspection reports and a log of all inspections to be made available to the State Agency upon request.
5. Local Agency shall maintain on file the inspection report from the local Health Department or other Kentucky regulatory agency stating the facility is suitable for the storage of food.
6. Local Agency shall provide personnel to handle the receipt of inbound freight and shall have sufficient personnel available to operate the warehouse.
7. Local Agency shall make every effort to distribute USDA commodities to local agencies and participants monthly.
8. Local Agency shall provide input to the State Agency regarding the ordering of supplemental foods to ensure program goals are met.

C. Allocation and Distribution

1. Local Agency shall provide monthly distributions to LDAs in those counties approved for CSFP. Local Agency further agrees to market potential LDAs to increase the allowable caseload to the maximum number assigned.

2. Local Agency shall strive to increase participation in CSFP when vacancies are available by conducting social marketing activities such as publishing announcements of times and locations of distribution.
3. Local Agency shall distribute CSFP Food Packages (See Attachment #24). LDAs based on the assigned caseload, both adult and child, using the following categorical eligibility priority system:

(a) Pregnant women, breastfeeding women, and infants.

(b) Children ages one (1) to three (3) years.

(c) Children ages four (4) to six (6) years.

(d) Postpartum women.

(e) Elderly persons.

4. USDA commodities shall not be transferred from one LDA to another LDA. Total packages delivered to each LDA shall be based on the assigned caseload.
5. Local Agency shall distribute CSFP foods in accordance with FNS food package instructions.

D. Public Notification: Local Agency shall ensure that all potentially eligible persons are being reached, with an emphasis placed on minorities. Local Agency and LDAs shall:

1. Advise the public, including minority and grassroots organizations in the service delivery area, of program availability and eligibility standards. This may be accomplished with newspaper ads, flyers, brochures, etc.
2. Inform potential participants of any significant program changes in affected areas, such as revisions in eligibility standards, distribution locations, and hours of operation.
3. Include the nondiscrimination statement on all documents distributed to program participants.
4. Display in a prominent place in offices and facilities dispensing program benefits to participants the USDA Title VI nondiscrimination poster "...And Justice for All" or an FNS approved substitute having the nondiscrimination statement and complaint filing procedure.
5. Have the capability of providing the above information in a bilingual manner where services are being delivered in a language minority area. This requirement can be met through the use of bilingual staff members, volunteers, and/or informational materials. The State Agency shall assist the Local Agency in providing bilingual materials.

E. Local Distributing Agencies

1. The Local Agency shall enter into a State Agency-approved written agreement which complies with CSFP requirements with each eligible LDA receiving USDA commodities. A copy of the agreement shall be on file with the Local Agency. The Local Agency shall enter into agreements with LDAs who qualify and are eligible under applicable federal guidelines for the distribution of USDA commodities.
2. The Local Agency shall agree that it will not impose any administrative charges on any individual LDA for USDA foods distributed or services related to the distribution of USDA foods.
3. The Local Agency shall ensure that all LDAs receiving USDA-donated foods operate the program in accordance with the requirements as set forth in 7 CFR Part 247 and, as applicable, 7 CFR Part 250.
4. The Local Agency shall ensure that LDAs that distribute USDA commodities to needy participants maintain a record of:
  - (1) The name and address of participant, and proxy if appropriate, receiving USDA commodities;
  - (2) The type of documentation used to determine need (income eligibility);
  - (3) The date food was distributed; and
  - (4) Signature of person who receives the food.
5. Local Agency shall ensure that LDAs determine eligibility of applicants for commodities in accordance with the following eligibility criteria:
  - (a) Income at or below One Hundred Eighty-Five percent (185%) of poverty income for WIC categorically eligible participants.
  - (b) Income at or below One Hundred Thirty percent (130%) poverty income for elderly participants.
  - (c) Applicant resides in the geographical location served by the state agency with no requirement regarding the length of residency.
6. The Local Agency shall inform LDAs of their responsibility for any improper distribution or use of USDA commodities or for any loss of, or damage to, donated foods caused by their fault or negligence. The Local Agency shall take action to obtain restitution in connection with claims for improper distribution, use or loss of, or damage to donated foods.



7. The Local Agency shall ensure that LDAs distributing USDA commodities observe the following restrictions:

(a) Participants in CSFP shall not be required to make any payments in money, materials, or services for, or in connection with, the receipt of supplemental foods. Participants shall not be solicited in connection with the receipt of supplemental foods for voluntary cash contributions.

(b) Distribution of supplemental foods shall not be used as a means for furthering the political or religious interests of any person or party.

Local Agencies that do not comply with the provisions concerning the limitation on unrelated activities may be terminated from the program.

8. The Local Agency shall ensure that all LDAs comply with all receipt, storage, handling, and distribution requirements under USDA and state law and policy.

9. The Local Agency shall ensure that nutrition education materials provided by the State Agency and from other sources are distributed in accordance with State Administrative Plan requirements. Nutrition education material includes brochures, flyers, recipe books, etc. Local Agency shall disseminate these materials to LDAs receiving USDA commodities that shall, in turn, make them available to program participants.

F. Dual Participation: The Local Agency in conjunction with LDAs will be responsible for the following:

1. The detection and prevention of dual participation within each LDA caseload and between LDAs. As part of the certification process, applicants shall be informed of the illegality of simultaneous participation in the WIC Program and the CSFP or simultaneous participation in more than one CSFP.

2. Participants found involved in dual participation shall be terminated from CSFP immediately and shall be notified of termination as specified in the dual participation agreement with Kentucky Cabinet for Health Services.

The Local Agency shall disqualify applicants and participants from program participation for a period not to exceed three (3) months if it is determined that the applicant, participant, parent, or caretaker fraudulently obtained or used program benefits. If it is determined that a serious health risk will result from disqualification from the program, and the participant is eligible at the time the violation is detected, the disqualification shall be waived. Fair hearing information shall be given to the participant at the time of disqualification.

#### G. Reports/Records

1. The Local Agency shall provide the State Agency complete and timely monthly reports, reporting work sheets, annual reports, and all other required programmatic and fiscal reports to document the receipt, disposal, and inventory of supplemental foods. Failure to file timely reports shall be a basis for cancellation of this Agreement.
2. The Local Agency shall collect, maintain, and report statistical data and information as requested by the State Agency. Such information shall be used for project monitoring and evaluation and shall be subject to Article V, Section C, of this Agreement.
3. The Local Agency shall maintain complete records of the quantity of commodities distributed to LDAs.
4. The Local Agency shall permit representatives of the State Agency, Food Safety Inspection Service, and USDA to inspect USDA-donated foods in storage, or facilities used in the handling or storage of such donated foods, and to review or audit all records, including financial records, at any reasonable time.
5. The Local Agency shall maintain all records pertaining to this Agreement for a period of not less than three (3) years following the date of submission of the final annual expenditure report. All records pertaining to this Agreement that are in audit, settlement of audit exceptions, or disputes are maintained until all discrepancies are resolved in accordance with applicable federal and state laws, regulations, and policies except as may otherwise be specified in this Agreement.
6. The Local Agency shall ensure that all LDAs comply with all CSFP record keeping requirements including the requirements set forth in 7 CFR Part 247§13 and 250§16, and other applicable USDA policy memoranda.
7. The Local Agency shall maintain records of all monitoring activity and take necessary follow-up actions regarding problems identified during visits to the LDAs. The records shall be made available to the State Agency upon request.

#### H. Reporting Losses

1. The Local Agency shall report promptly, with five (5) days, all instances of lost commodities, regardless of value, to the State Agency. Lost commodities are those which, for any reason, cannot be accounted for by appropriate records. Commodities may be lost by theft, damage, spoilage, infestation in transit or in storage, improper distribution, sale or exchange, diversion to an improper use, failure to deliver, or other similar causes.

2. The Local Agency shall not sell, transfer, barter, or offer for sale the items supplied by USDA in exchange for money, property, or services, or otherwise allow the items to re-enter commercial channels.
  3. If the Local Agency improperly uses any donated commodity, or causes loss of or damage to a donated commodity, it may be required to pay for the lost commodities at a sum equal to the USDA value established at the time of the loss, or damage to, a donated commodity. The State Agency shall determine the amount of loss. The Local Agency accepts full responsibility for compliance with the provisions of this Agreement, including potential liability for any commodities lost through negligence, or any reimbursement reserved for costs inadequately documented. Liability shall include the payment of cash for the value of the donated food. If the State Agency determines that overpayment has been made for allowable storage or distribution costs, the Local Agency shall reimburse the State Agency the sum specified, within thirty (30) calendar days from the date of written notification.
  4. If USDA commodities are found to be damaged or out of condition and are declared, by state or local health officials in a condemnation certificate, to be unfit for human consumption, the Local Agency shall submit a complete report to the State Agency covering the condition relative to such commodities and shall dispose of such commodities in accordance with recommendations and instructions from health officials, the State Agency, or USDA.
- I. Method of Payment: The Local Agency shall be reimbursed on a monthly basis for actual allowable costs (incurred in the distribution and storage of USDA commodities) up to a maximum of \$4.00 per participant, multiplied by the budgeted number of slots.
1. Budget: The program budget for the implementation of this Agreement is to be based on the budgeted number of participants to receive services multiplied by the actual cost incurred in the distribution and storage of USDA commodities, up to the maximum of \$4.00 per participant.
  2. Compliance by Local Agency: The obligation of the State Agency to make payment shall be conditioned upon full and faithful compliance by the Local Agency with all stipulations, covenants, and conditions of this Agreement.
  3. Safeguarding Information: All information regarding applicants for and recipients of services under this Agreement shall be available only to the State Agency, Local Agency, the appropriate LDA and to those persons authorized in writing to receive same by the recipient, or as otherwise authorized by federal and state laws. The Local Agency assumes any and all liability and responsibility for such unauthorized disclosures.
  4. Insurance/Bonding/Performance Guarantee: The State Agency shall at no time be legally responsible for any negligence or wrongdoing on the part of the Local Agency or its employees, agents, and local agencies.

Local Agency agrees to indemnify and hold harmless State Agency from and against any and all claims, demands, liabilities, suits, damages, and costs of every kind and nature whatsoever, including court costs and attorneys' fees, arising out of this Agreement and caused by the Local Agency or its employees, agents, and local agencies in the performance of this Agreement. Local Agency agrees, to the extent required by law, that it shall maintain Workers' Compensation insurance which shall insure, to the benefit of all Local Agency's personnel performing services under this Agreement, comprehensive general liability insurance in the amount equal to One Hundred percent (100%) of the funds awarded hereunder and the value and liability of USDA commodities received.

Local Agency shall provide a performance guarantee in the amount of Twenty-Five Thousand Dollars (\$25,000), which is deemed ample to cover the administrative and handling costs of changing distributors in the event of non-performance. Local Agency shall furnish the State Agency with a Certificate of Insurance providing the aforesaid coverage, prior to the commencement of performance under this Agreement.

5. Conditions for Agreement Continuation: After the State Agency has conducted a review of records or performance; it shall issue to the Local Agency a report of its review. The report shall be sent to the Local Agency by certified mail, return receipt requested. If the report identifies deficiencies, it shall specify conditions for Agreement continuation. Such conditions shall state both the corrective action which shall be taken and the time frame in which such action shall be taken. The agreement shall automatically terminate on any date that the Local Agency fails to meet the specified condition(s) without further action by the State Agency. Notice of termination shall follow.

#### ARTICLE IV

#### KENTUCKY DEPARTMENT OF AGRICULTURE RESPONSIBILITIES AND REIMBURSEMENT PROCEDURES

- A. Payment for Allowable Expenditures Only: The method of payment shall be for Allowable Expenditures as defined by applicable USDA regulations. The State Agency shall receive required monthly and quarterly program and fiscal reports as outlined below. Any increase, decrease, or change in the funding under this Agreement authorized by the parties, in compliance with applicable laws and policies, shall require a modification of the reimbursement rate applied to Local Agency expenditures.
- B. Reports: The State Agency shall reimburse Local Agency upon receipt of units of service delivery information, reimbursement requests, and cost reports as follows:
  1. Request for Reimbursement or Advance Report - Financial Report: Local Agencies who are not paid on a unit of service basis (i.e., administrative, planning, or training agreement, etc.) may be reconciled on a quarterly basis by submitting a Request for Reimbursement or Advance Report (See Attachment #22) to the State Agency. The State Agency staff shall review for accuracy and approval for payment processing.

2. Financial Report: All Local Agencies shall submit a final financial report pursuant to section C of this Article. This report shall include financial information for the entire Agreement period. Total payment for the Agreement period shall not exceed the total budgeted amount.
- C. Form of Report or Request: Requests or reports shall be filed using a designated form to be provided by the State Agency and completed in accordance with detailed instructions included with the applicable form. Requests or reports must be prepared and signed in ink.
- D. Time of Filing: The Actual Expense Report shall be due no later than the 15th day of the month following the month service is provided.
- E. Failure to File Report or Request: If a Local Agency fails to file any required report within the above-specified time, all funds due to the Local Agency shall be withheld by the State Agency. The State Agency shall not accept reimbursement requests if received more than forty-five (45) days following the schedule set forth in Article IV, Section D above.
- F. Place of Filing: The Actual Expense Report shall be submitted to:
- Kentucky Department of Agriculture  
Division of Food Distribution  
107 Corporate Drive  
Frankfort, Kentucky 40601
- G. Payment or Adjustments: Payment due or advance request by Local Agency or adjustments due to the State Agency shall be made as follows:
1. Request for Reimbursement or Advance- Form FD-CSFP-111: In order to receive timely payments, Local Agency must submit the Request for Reimbursement or Advance form by the 15th day of the month for which reimbursement is being requested. Local Agency shall be paid the actual allowable cost reported, but payment shall not exceed Agreement limits. Requests for Advance shall be a maximum of one-twelfth (1/12) of the annual budgeted amount and shall be requested once each quarter.
  2. Actual Cost Report or Final Financial Cost Report: After review by the State Agency, a quarterly or final adjustment shall be made with the Local Agency as follows:
    - a. Any payment due the Local Agency by the State Agency shall be made upon completion of the review.
    - b. Overpayments to the Local Agency made by the State Agency shall be collected in accordance with the State Agency recoupment policies and procedures.

- c. Total payment for the Agreement period shall not exceed the total budgeted cost as stated in this Agreement.
- H. Final Financial Request: If the Agreement is terminated, or if during the last month of the Agreement period, it is known that a Local Agency shall not receive an Agreement for a subsequent period, the final reimbursement request due shall not be paid until the final financial report is reviewed.
- I. State Fiscal Year End: If a reimbursement period or the Agreement ends on June 30, the reimbursement documentation is due to the State Agency by the close of business on the third (3rd) working day of July. For any other monthly reimbursement, the due dates remain as written in this Article.

## ARTICLE V AUDITS AND RECORDS

At any time during normal business hours and as often as the State Agency, the State Auditor, the Office of the Attorney General, Government Accounting Office, USDA, and any other appropriate federal agency or the designee of any of the above, may deem necessary, the Local Agency and its LDAs shall immediately make available for examination all records with respect to all matters covered by this Agreement. The Local Agency and its LDAs shall permit any of the above to audit, examine, make copies, excerpts, or transcripts of such records and contact and conduct private interviews with the Local Agency and its LDAs clients and employees, and perform on-site reviews of all matters relating to service delivery. If any audit, litigation, claim, or other action involving the records has been initiated prior to the expiration of a three (3) year period following the date of the Agreement termination or expiration, this Article and the terms hereunder shall continue to apply until the action is completed and the issues are resolved.

- A. AUDIT REQUIREMENTS: The Local Agency and its local agencies agree that they shall comply with federal and state audit requirements.
  - 1. Audits of States, Local Governments and Non-Profit Organizations: States, local governments and nonprofit sub-recipient organizations, both private and public, that expend Five Hundred Thousand Dollars (\$500,000) or more in Federal Financial Assistance from all sources for fiscal years that end after December 31, 2004, shall obtain an annual audit in accordance with the Single Audit Act and the revised OMB Circular A-133.
  - 2. Filing Audit Reports: Each organization required to have an audit shall supply a copy of such audit, data collection form, reporting package, any management letters associated with the audit, and corrective action plan to the Kentucky Department of Agriculture, Division of Food Distribution, 107 Corporate Drive, Frankfort, Kentucky 40601 within thirty (30) calendar days of the receipt of such report but no later than nine (9) months after the end of the organization's fiscal year.
  - 3. Working Papers: Working papers shall be retained by the audit firm and shall be

available for examination by State Agency, or its designee, for a period of at least three (3) years following the issuance of the audit report. Retention of working papers beyond three (3) years is required where questioned costs or practices have not been resolved with the State Agency.

B. CORRECTIVE ACTIONS PLANS: If the audit describes weaknesses in internal controls or program compliance, the Local Agency and its LDAs shall submit a corrective action plan to eliminate the weaknesses indicating the actions taken, actions to be taken, dates of anticipated completion, the name of the contact person responsible, or submit an explanation of specific reasons why no corrective action is required. The corrective action plan shall be submitted along with the audit report or reporting package within thirty (30) days of the receipt of the final audit report or management letter. Corrective action shall be initiated within six (6) months of the receipt of the audit report and proceed as rapidly as possible. In the event that an audit report contains audit exceptions or disallowances, the following procedures shall be used in making the appropriate audit adjustment(s):

1. Notice of Exception and Disallowances: The State Agency shall furnish the Local Agency with written notice containing the adjustment for each exception. Such notice shall state the total sum disallowed and request payment due to the State Agency in full amount within thirty (30) days of the receipt of notice. Notice shall be sent to the Local Agency by certified mail, return receipt requested. Audit exceptions or disallowances shall be accepted as final unless appealed within thirty (30) days of receipt of the notice of disallowance. Payment shall be made within thirty (30) days of the receipt of notice of disallowance regardless of the filing of an appeal.
2. Disallowance Sums, Set-Off: Any provision for appeal notwithstanding, the State Agency is authorized to recoup at any time after receipt of the notice of disallowances any funds owed to the State Agency. Recoupment shall be by withholding or offsetting such funds for which the State Agency may be obligated to the Local Agency under this or any previous or future contracts. However, if the Local Agency can demonstrate that such withholding or set-off would constitute a serious hazard to the quality of services, the State Agency may, in its discretion, grant such repayment terms as may be determined by the State Agency to be consistent with sound business practices.
3. Interest Provision/Repayment for Disallowed Amounts: The Local Agency shall pay interest on the disallowed amount with said interest accruing from the thirtieth (30th) day following the date of receipt of the notice of disallowance. The Local Agency may request that they be permitted to make repayment on an installment payment schedule. Such request shall be made in writing within thirty (30) days of the receipt of the notice of disallowance and shall contain evidence to support the Local Agency's allegation of financial inability to pay the sum in full. At the discretion of the State Agency, the State Agency may agree in writing to permit the Local Agency to repay pursuant to an installment payment schedule. The legal interest rate plus two percent (2%) shall be the State Agency interest rate on

extended installment repayment.

4. Audits During and After the Agreement Period: The provisions of this Article shall apply to audits commencing during the Agreement period and audits following termination of this Agreement for a period of three (3) years.

- C. ACCURACY OF DATA AND REPORTS: The Local Agency agrees that all statements, reports, and claims, financial and otherwise, shall be certified as true, accurate, and complete, and the Local Agency shall not submit those claims, statements, or reports which they know, or have reason to know, are not properly prepared or payable pursuant to federal and state laws, applicable regulations, this Agreement, and the State Agency policy.

MAINTENANCE OF RECORDS: The Local Agency and its local agencies shall maintain an accounting system, with supporting fiscal records, adequate to assure that claims for funds are in accordance with this Agreement and all applicable laws, regulations, and policies. The Local Agency shall keep one (1) copy of the OMB-approved Data Collection Form and one (1) copy of the OMB A-133 reporting package on file for three (3) years from the date of submission to the Federal Clearinghouse. The Local Agency shall retain all financial and programmatic records, supporting documents, and statistical records under this Agreement for a period not less than three (3) years following the date of submission of the annual expenditure report. Property and equipment records shall be maintained for a period of three (3) years after transfer, replacement, sale, or junking of the item. If any audit, litigation, claims, or other actions involving the records have been initiated prior to the expiration of the three (3) year period, the records shall be retained until completion of the action and resolution of all issues. Failure of the Local Agency to maintain such records according to this Agreement shall render them unqualified for current and future contracts with the State Agency. All records are the property of the State Agency and shall be surrendered upon written request.

- D. INFORMATION REQUIRED

Ownership Information: Local Agency agrees to supply within thirty (30) days of the date of this Agreement, and to report any changes within five (5) days to the State Agency, full and complete information as to the assurance that it:

- a. Is duly licensed by the State or local government entity and has the legal authority to apply for and receive this Agreement; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the contractor's governing body, authorizing this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Agreement to act in connection with this Agreement and to provide such additional information as may be required.
- b. Has a 501(c) (3) tax exempt status with the Internal Revenue Service.
- c. Shall establish safeguards to prohibit employees from using their positions for



a purpose that constitutes, or presents the appearance of, personal or organizational conflict of interest, or personal gain.

- d. Shall provide adequate refrigeration and storage space to ensure the wholesomeness of the food until used, or distributed.

## ARTICLE VI TERMINATION OF AGREEMENT

Either the Department or the Local Agency may terminate this agreement for cause, by giving thirty (30) days' notice in writing to the other party by certified or registered mail with return receipt requested.

- A. Termination for Lack of Funds: The parties hereto agree that their liabilities and responsibilities, one to another, shall be contingent upon the availability of specific federal administrative funds and that this Agreement shall be terminated if such funding ceases to be available. The State Agency shall have the sole responsibility for determining the availability of such federal funds.
- B. Termination for Breach of Agreement: This Agreement may be terminated by either party upon thirty (30) days written notice at any time within the Agreement period if it is determined by such party that the other party has materially breached or otherwise materially failed to comply with its obligations.
- C. Termination for Breach of Previous Contracts or Nonpayment of Previous Audit Exceptions: This Agreement may be terminated by the State Agency at any time within the Agreement period if the Local Agency, after exhaustion of all administrative and judicial appeals, has failed to make payment in full to the State Agency for audit disallowances pursuant to any previous Agreement between the parties.
- D. Insolvency: This Agreement shall be void and subject to immediate termination by the State Agency upon the Local Agency's insolvency, including the filing of proceedings in bankruptcy.
- E. Termination for Convenience: The parties agree that the Agreement may be terminated by either party upon 30 days written notice.
- F. Notice of Termination: In the event of termination of this Agreement under this Article, the party terminating the Agreement shall give notice of such termination in writing to the other party. Notice of termination shall be sent by certified mail, return receipt requested, and shall be effective thirty (30) days after the date of receipt, unless otherwise provided by law; provided, however, if terminated pursuant to Sections A or D of this Article, said termination shall be effective upon receipt of such notice.
- G. Filing of Final Financial Report: Upon termination of this Agreement under this Article, the Local Agency shall submit, within seven (7) days of the termination, a final financial report as prescribed in this Agreement.

- H. Transfer of Donated Food: Upon termination, the Local Agency shall comply with instructions of the State Agency regarding the transfer of all donated commodities remaining in its possession or control. The responsibility for the cost of such transfer shall be assumed by the Local Agency.

## ARTICLE VII COVENANTS AND CONDITIONS

In addition to all other stipulations, covenants, and conditions contained herein, the parties to this Agreement agree to the following covenants and conditions:

- A. Applicable Laws and Regulations: The State Agency agrees to comply with all applicable federal and state laws and regulations including constitutional provisions regarding due process and equal protection of the laws and including, but not limited to:
1. All applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 USC 7401, *et seq.*)
  2. Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and regulations issued pursuant thereto, 45 CFR Part 80.
  3. Title VII of the Civil Rights Act of 1964 (42 USC 2000e) regarding employees or applicants for employment.
  4. Section 504 of the Rehabilitation Act of 1973, as amended, (29 USC 794), which prohibits discrimination on the basis of disability in programs and activities receiving or benefiting from federal financial assistance, and regulations issued pursuant thereto (45 CFR Part 84).
  5. The Age Discrimination in Employment Act (42 USC 12101 *et seq.*) which prohibits discrimination on the basis of age in programs or activities receiving or benefiting from federal financial assistance.
  6. The Omnibus Budget Reconciliation Act of 1981, (PE 97-35), which prohibits discrimination on the basis of sex and religion in programs and activities receiving or benefiting from federal financial assistance.
  7. Americans with Disabilities Act, (42 USC 12101 *et seq.*), and regulations issued pursuant thereto, 42 CFR Parts 35 and 36.
- B. Safety Precautions: The State Agency and USDA assume no responsibility with respect to accidents, illnesses, or claims arising out of any work undertaken with the assistance of federal or state funds. The Local Agency shall take necessary steps to protect itself and its personnel. The Local Agency and its LDAs shall comply with all applicable local, state, and federal occupational and safety acts, rules, and regulations.

- C. Titles: All titles used herein are for the purpose of clarification and shall not be construed to infer a contractual construction of language.
- D. Attorney's Fees and Legal Services: No attorney shall be engaged for actions against the State Agency or others using funds provided by the State Agency pursuant to the terms of this Agreement. The State Agency shall under no circumstances become obligated to pay attorney fees or the cost of legal action against the Local Agency or its LDAs. Any right to attorney fees is specifically waived by the Local Agency by the signing of this Agreement. The Local Agency shall pay to the State Agency as the court may adjudge reasonable in addition to the amount of judgment and costs.
- E. Restrictions on Lobbying: In accordance with 31 USC 1352, funds received through this Agreement shall not be expended to pay any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any of the following covered federal actions: the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement. This restriction is applicable to all subcontractors.
- F. Integration and Amendment: This Agreement shall be construed to be the complete integration of all understandings between the parties hereto. No prior or contemporaneous addition, deletion, or other amendment shall have any force or affect whatsoever, unless embodied herein. No subsequent modification, renewal, addition, deletion, or other amendment hereto shall have any force or effect, unless embodied in a written agreement executed and approved by both parties.
- G. Extension: At the end of the term of this Agreement, the State Agency shall have the option to extend or renew this Agreement upon the same terms and conditions as contained herein for a one (1) year period but not to exceed a total of three (3) one year periods, provided, however, that any rate adjustment(s) shall be negotiated and set forth in writing and signed by both parties pursuant to Section F of this Article.
- H. Non-Waiver of Breach and/or Rights: The State Agency and the Local Agency agree that the execution and performance of any provision of this Agreement or the continued payment to Local Agency by the State Agency, shall in no way affect the right of the State Agency to enforce the provision of this Agreement. Nor shall the waiver by the State Agency of a breach of any provision herein be taken or held to be waiver of any succeeding breach of such provision, or as a waiver of the provision itself. All rights or obligations are hereby preserved, protected, and reserved.
- I. Severability and Conformity with Law: The provisions of this Agreement and performance hereunder shall be subject to all laws, regulations, ordinances, and codes of federal, state, and local governments. All terms of this Agreement shall be construed in a manner consistent with the aforesaid; and should any of the terms herein conflict with any

of the aforesaid, then the terms shall be deemed modified to conform therewith; and the remaining provisions of this Agreement shall remain intact. The Local Agency and its LDAs shall comply with all the aforesaid laws and regulations as may be promulgated during the term of this Agreement.

- J. Federal or State Law and Regulation: Reference to or attached copies of federal or state regulations or law are believed to be the most current, but it is the Local Agency's responsibility to obtain updates, amendments, or other changes that exist.
- K. Political Activity: No funds, materials, property, or services provided directly or indirectly under this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office or any activity in violation of the "Hatch Act." (5 USC 15/5 USC 73 § 3)
- L. Reporting of Fraudulent Activity: If at any time during the term of this Agreement, the Local Agency becomes aware of or has reason to believe that, under this or any other program administered by the State Agency, a recipient of or applicant for services, an employee of the Local Agency and its LDAs or its employees, or the State Agency have improperly or fraudulently applied for or received benefits, monies, or services pursuant to this or any other agreement, such information shall be reported in confidence by the Local Agency directly to the State Agency.
- M. Incorporation of Schedules/Appendices: All schedules or appendices attached to this agreement are expressly made a part hereto and incorporated by reference. If this Agreement sets a higher standard than contained in a schedule or appendix, the standard set in the body of the Agreement shall prevail.
- N. Insurance: The Local Agency shall obtain and keep in effect comprehensive insurance covering loss of property by theft, fire, flood, electrical, or vandalism with respect to all property purchased with any funds provided by the State Agency. The Local Agency shall obtain and keep in effect any other policies of insurance which may be required by law for its operations.
- O. Place of Suit. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provision thereof, shall be instituted in Franklin Circuit Court.
- P. Disclaimer: The Kentucky Department of Agriculture (State Agency) disallows and disclaims all responsibility for any liability for losses, damage, claims, demands, or costs from third parties asserted against it as a result of operations performed by the Local Agency and its LDAs herein in the performance of this Agreement. The Local Agency acknowledges and agrees that it is an independent Local Agency and does not act as an agent, servant, or employee of the Kentucky Department of Agriculture in the performance of this Agreement.
- Q. Hold Harmless: The Local Agency and its LDAs shall hold and save the State Agency, its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses, resulting from any suits or damages sustained by any persons or property resulting in whole or in part from the negligent performance or omission of any employee,

agent, or representative of the Local Agency. This Provision shall not apply to any Kentucky State Agency, the federal government, or another state.

- R. Kentucky Law Clause: Upon award of an agreement under this proposal, the persons, partnership, association, or corporation to whom the award is made shall comply with the laws of the Commonwealth of Kentucky and the local government entity which requires such person or entity to be authorized and/or licensed to do business in this State or locality.

Notwithstanding the fact that applicable statutes may exempt or exclude the successful Local Agency from requirements that it be authorized and/or licensed to do business in this State, by submission of a signed proposal, the Local Agency agrees to subject itself to the jurisdiction and process of the courts of the Commonwealth of Kentucky as to all matters and disputes arising or which may arise under the Agreement and the performance thereof, including any questions as to the liability for taxes, licenses, or fees levied by the State.

- S. Sub-agreements, Employees and Non-Assignability: No services required to be provided under this Agreement shall be provided to a recipient by anyone other than the Local Agency, an employee of the Local Agency, or a volunteer of the Local Agency. Unless otherwise expressly authorized in writing, no sub-agreement for the provision of services shall be entered into by the Local Agency. Authorized sub-agreements under this Agreement shall be in writing and shall be subject to the terms of this Agreement. The Local Agency shall be solely responsible for the performance of any LDAs. All LDA agreements must be submitted to the State Agency for written approval before any reimbursement is made or services rendered. Assignment of this Agreement or any rights hereunder shall not be valid without written consent of the State Agency.
- T. Governing Law: It is mutually understood and agreed that this Agreement shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance.
- U. Copyrights: If any material is developed and copyrighted in the course of or under this Agreement, the State Agency shall have a royalty free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use the work for the State Agency purposes.
- V. Suspensions and Disbarment: By signing this Agreement for an amount in excess of One Hundred Thousand Dollars (\$100,000) in federal funds, the Local Agency certifies by its signature that the Local Agency and its principals are not suspended or disbarred from federal or state procurement. If it is found that the Local Agency or any principal of the Local Agency is suspended or disbarred before or during the Agreement period, then this Agreement shall be immediately rendered null and void. All funds paid under this Agreement to the Local Agency shall be refunded by the Local Agency with a two percent (2%) penalty within thirty (30) days of the State Agency's notification of the Agreement being declared null and void.
- W. CIVIL RIGHTS ASSURANCE: The Local Agency shall comply with Title VI of the Civil Rights Act of 1964 (42 USC § 2000e *et seq.*, the American's with Disabilities Act (42 USC 12101 *et seq.*), the Age Discrimination in Employment Act (29 USC § 621 *et*

*seq.*) , and all requirements imposed by the regulations of the United States Department of Agriculture (7 CFR Part 15), United States Department of Justice (28 CFR Parts 42 and 50), and the Food and Nutrition Services directives or regulations issued pursuant to that Act, to the effect that, no person in the United States shall, on the grounds of race, color, national origin, age, sex, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the program applicant received federal financial assistance from the State Agency; and hereby gives assurance that it shall immediately take any measures necessary to effectuate this Agreement.

This assurance is given in consideration of and for the purpose of obtaining any and all federal financial assistance, grants and loans of federal funds, reimbursable expenditures, grants or donations of federal property and interest in property, the detail of federal personnel, the sale and lease of, and the permission to use, federal property or interest in such property, or the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient or any improvements made with federal financial assistance extended to the program applicant by the State Agency. This includes any federal agreement, arrangement, or other contract which has as one of its purposes, the provision of assistance such as food and cash assistance for purchase or rental of food service equipment, or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the Local Agency shall compile data, maintain records and submit reports as required, permit effective enforcement of Title VI of the Civil Rights Act and permit authorized USDA personnel, during normal working hours, to review such records, books, and accounts as needed to ascertain compliance with Title VI of the Civil Rights. If there are any violations of this assurance, the USDA, Food and Nutrition Service shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Kentucky Department of Agriculture, Division of Food Distribution and the Local Agency, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from the Kentucky Department of Agriculture. The person or persons whose signatures appear on this Agreement are authorized to sign this assurance on behalf of the program applicant.

IN WITNESS WHEREOF, the State Agency and the \*\*\* **Insert Name of Agency Here**\*\*\* by their authorized agents, have executed this Agreement on this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

KENTUCKY DEPARTMENT OF  
AGRICULTURE

Division of Food Distribution

107 Corporate Drive

Frankfort, KY 40601

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(Print or Type Name of  
Executive Director of Local Agency)

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Ms. Devon Hankins  
Executive Director, Office of Consumer &  
Environmental Protection

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Signature of Executive Director  
Local Agency

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Date

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Date

Approved as to Form and Legality:

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Nicole Liberto,  
Legal Counsel

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Date

## **ATTACHMENTS**

1. Agreement Between State Agency and Local Agency
2. Agreement Between Local Agency and Local Certification/Distributing Agency
3. Local Agency Application Form
4. CSFP Waiting List Form
5. CSFP Participant Application/Certification Form
6. CSFP Participant Agreement
7. Eligibility Notification Letter
8. Notification for Renewal Form
9. Verification of Certification Form
10. CSFP/WIC Agency Memorandum of Understanding
11. Supplemental Food Issuance Record
12. Commodity Loss Report
13. Commodity Supplemental Food Program Monthly Report
14. Commodity Supplemental Food Program Review Form
15. Supplemental Food Complaint Form
16. WIC Participation Statistics
17. Medicaid Income Eligibility Guidelines
18. Civil Rights Compliance Review Data
19. List of Contracted Distribution Sites
20. Request for Reimbursement or Advance Report, FD-CSFP-111
21. FNS-153 Form – Monthly Report of the CSFP and Quarterly Administrative Financial Status Report
22. CSFP Food Package
23. Kentucky Department of Agriculture, Division of Food Distribution's Organization Chart